

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

1 MIGDALIA AMALBERT GARCIA,  
2 GLADYS AMALBERT GARCIA,  
3 NORMA AMALBERT GARCIA in  
4 substitution of  
EDNA GARCIA COLON and  
JOSE AMALBERT FIGUEROA

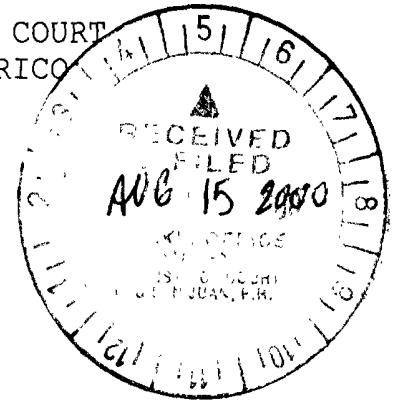
5 Plaintiffs,

6 v.

CIVIL NO. 98-1478 (RLA)

7 KMART CORPORATION et al.,

8 Defendants.  
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10 **MINUTES AND ORDER OF PRETRIAL/SETTLEMENT CONFERENCE**  
11 **HELD ON AUGUST 8, 2000**

12 The parties appeared before the undersigned in chambers for a  
13 Pretrial/Settlement Conference on August 8, 2000, from 10:30 a.m. to  
14 12:30 p.m. Attorneys JOSE A. LEON LANDRAU and NOEMI LANDRAU RIVERA  
15 appeared on behalf of plaintiffs. MARCOS RAMIREZ, ESQ., and EDUARDO  
16 VERA, ESQ., represented defendant, KMART CORPORATION.

17 **Defendant's Request for Extension of Discovery Period and**  
18 **Continuance of Trial**

19 The Court allowed KMART's argument on reconsideration of their  
20 request to have trial postponed while additional discovery is carried  
21 out related to plaintiff EDNA GARCIA's allegedly pre-existing medical  
22 conditions and to the alleged negligence of third parties who  
23 intervened with MS. GARCIA after her incident at KMART.

24 KMART argues that because the claim for MS. GARCIA's wrongful  
25 death was filed only a year ago in July, it has not had sufficient  
26 time to conduct the discovery needed to defend itself from such

*as per: [Signature]*

*(93) [Signature]*

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1 claim, particularly MS. GARCIA's alleged previously existing medical  
2 conditions as well as the contributing or intervening negligence of  
3 doctors and hospitals that treated her after her alleged fall at the  
4 KMART store. It further argues that it was not until February of this  
5 year, when KMART's medical expert rendered his report, that it found  
6 out that plaintiff suffered from pre-existing health conditions that  
7 may have caused her death in December of 1998.

8  
9 Plaintiffs on the other hand argue that KMART was made aware of  
10 MS. GARCIA's demise as far back as March of 1999, that the medical  
11 records for Centro Medico and Maimonides Medical Center in New York,  
12 including MS. GARCIA's death certificate, had been made available  
13 since September and November of 1999, respectively, and that, in any  
14 event, defendant was aware for over a year that it had to defend  
15 against a wrongful death claim as set forth in the Third Amended  
16 Complaint filed by plaintiffs in July of 1999. Plaintiffs assert  
17 that defendants could have queried MS. GARCIA's husband about her  
18 pre-existing health conditions regardless of her eventual fate, when  
19 they deposed him in November of 1999. They further aver that the  
20 issue of the medical malpractice allegedly suffered by MS. GARCIA at  
21 the hands of third-party physicians and/or hospitals came about due  
22 to a mere passing reference in the medical report prepared by  
23 defendant's expert.

24  
25 Having heard the arguments of counsel, and after a thorough  
26 review of the record, the Court hereby finds as follows:

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- 1) An amended complaint including the wrongful death of MS. GARCIA as a claim in this action was filed in July 1, 1999;<sup>1</sup>
- 2) The Joint Initial Scheduling Conference Memorandum submitted by the parties on August 10, 1999 (docket No. 29) included a wrongful death claim for MS. GARCIA as part of the allegations of negligence set forth in Plaintiffs' Version of the Case;
- 3) Defendant consented to and filed together with plaintiffs an Amended Discovery Schedule which included date-specific discovery deadlines indicating that **discovery would be concluded by January, 2000.**<sup>2</sup>
- 4) Therefore, having had notice for over 7 months that plaintiffs were including a wrongful death claim, defendants acquiesced to concluding discovery proceedings by January of 2000. By this time defendant was also aware

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<sup>1</sup> It should be noted that plaintiffs notified opposing counsel via Informative Motion and Request for Continuance of Scheduling Hearing filed with the Court as far back as March 25, 1999, that they had **"been informed of Edna Garcia's death on December 31, 1998, due to health conditions related to the accident object of this complaint"**. See docket No. 19 (emphasis added). Indeed, defendant apparently knew of MS. GARCIA's death even as early as March 3, 1999, the date it filed its Answer to the Amended Complaint. See docket No. 18, at p.3.

<sup>2</sup> The parties submitted the amended discovery schedule at the Court's direction, issued as part of the Minutes of the Initial Scheduling Conference held on September 1, 1999. See docket No. 32.

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1 that the Court intended to hold the trial in March 16,  
2 2000. Therefore, they cannot be heard now with arguments  
3 that the Court strapped them into discovery deadlines that  
4 were impossible to achieve.

5 Accordingly, KMART's Motion For Reconsideration is hereby  
6 DENIED.

7  
8 However, upon further review the Court will set aside its Order  
9 imposing sanctions in the amount of \$1,000.00 upon KMART and its  
10 counsel. Accordingly, the sanctions imposed in our Order of August  
11 1, 2000 (docket No. 77) are hereby VACATED.

12 **TRIAL** remains scheduled for **August 15, 2000, at 9:30 a.m.**

13 **Defendant's Objections to**  
14 **Plaintiffs' Proposed Witness List**

15 Plaintiffs' Informative Motion Announcing Fact Witness as  
16 Hostile Witness and/or Witness for Plaintiffs (**docket No. 82**, filed  
17 on August 7, 2000) was discussed. Defendant objects to plaintiffs  
18 using ARNALDO JOSUE GARCIA ZAYAS as a witness in their case in chief.  
19 Plaintiffs' response states that this witness cannot be deemed a  
20 surprise to defendant KMART since it had announced him as its witness  
21 in its portion of the Joint ISC memorandum filed in August of 1999  
22 (docket No. 29).

23 At the conference, the parties were ordered to file  
24 contemporaneous briefs setting forth their arguments on this matter.  
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1 Having reviewed the briefs,<sup>3</sup> the Court will allow plaintiffs to  
2 call MR. GARCIA ZAYAS as a witness in this case.

3 Defendant also objected to the inclusion of MS. GARCIA's three  
4 daughters as witnesses at trial. KMART argues that these three  
5 witnesses were not announced in plaintiffs' part of the Joint ISC  
6 Memorandum, and that, worse yet, answers to interrogatories were only  
7 received from two of these three witnesses very belatedly, namely  
8 February and April 2000, well after the conclusion of the discovery  
9 period. Plaintiffs argue that these witnesses should be allowed to  
10 testify because they have been parties to the case since July of  
11 1999, when they substituted their mother, deceased plaintiff EDNA  
12 GARCIA, in the complaint.  
13

14 Having considered the arguments presented, the Court will not  
15 permit plaintiffs to present the testimony of NORMA, MIGDALIA and  
16 GLADYS AMALBERT GARCIA.

17 Defendant's objections to the testimony of MILAGROS CRUZ  
18 VALENTIN were OVERRULED. MS. CRUZ shall be allowed to testify as to  
19 her observations on the date of the incident at KMART.  
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21 **Death Certificate**  
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24 <sup>3</sup> See Informative Motion filed by KMART on August 9, 2000 (docket  
25 No. 83), and Motion Regarding Fact Witnesses at Trial and Request for  
26 Exclusion of Documental Evidence (docket No. 84), filed by plaintiffs  
on August 10, 2000.

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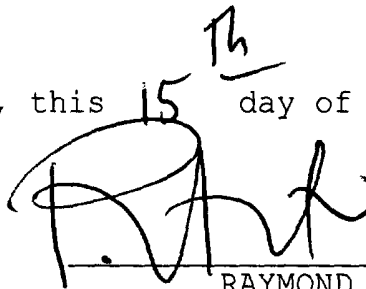
1 Plaintiffs also request that defendants not be permitted to  
2 present the reverse side of MS. GARCIA's death certificate because it  
3 was produced by KMART after the discovery deadlines had expired.

4 The death certificate has two sides. Plaintiffs intend to use  
5 the front side of the certificate at trial. The rule of  
6 completeness, embodied in Rule 106 Fed. R. Civ. P. mandates that  
7 "[w]hen a writing or recorded statement or part thereof is introduced  
8 by a party, an adverse party may require him at that time to  
9 introduce any other part or any other writing or recorded statement  
10 which ought in fairness to be considered contemporaneously with it".

11 Therefore, applying the standard of fairness required by the  
12 Rule, defendants shall be permitted to present the reverse side of  
13 the death certificate to the jury. See 21 Charles Alan Wright and  
14 Kenneth w. Graham, *Federal Practice and Procedure* § 5077 (1977).  
15

16 IT IS SO ORDERED.

17 San Juan, Puerto Rico, this 15<sup>th</sup> day of August, 2000.



20 RAYMOND L. ACOSTA  
21 United States District Judge  
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